Supreme Court, U.S.
FILED
SEP 14 1998
CLERK

(2)

No. 98-274

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1998

DON R. TYLER,

Petitioner,

v.

STATE OF FLORIDA, et. al.,

Respondents.

On Petition for Writ of Certiorari
To the Circuit Court, Tenth Judicial Circuit,
Polk County, Florida

Brief in Opposition of Respondents State of Florida, Department of Insurance, Florida Division of Risk Management, Florida Division of Insurance Fraud, Florida Department of Agriculture and Consumer Services, and Florida Division of Forestry

---

By: Mitchell D. Franks
LANE, TROHN, BERTRAND &VREELAND, P.A.
P.O. Box 3
Lakeland, FL 33802-0003
(941) 284-2200 (941) 688-0310 (fax)
Counsel of Record for Respondents

QUESTION PRESENTED

I.

Should this Court decline to grant certiorari to review a fact-specific application of a Florida Rule of Appellate Procedure?

PARTIES TO THE CASE

DON R. TYLER: Petitioner

THE STATE OF FLORIDA, FLORIDA DEPARTMENT OF INSURANCE, FLORIDA DIVISION OF RISK MANAGEMENT, FLORIDA DIVISION OF INSURANCE FRAUD, FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, FLORIDA DIVISION OF FORESTRY, CRAWFORD AND COMPANY, WILLIAM L. EARP, M.D., WILLIAM FRIEDMAN, M.D., and J. MASON WINES, Esq.: Respondents

TABLE OF CONTENTS

QUESTION PRESENTED i

PARTIES TO THE CASE ii

TABLE OF AUTHORITIES iv

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES ORDINANCES, AND REGULATIONS INVOLVED v

STATEMENT OF THE CASE 1

ARGUMENT 4

I. THIS COURT SHOULD DECLINE TO GRANT CERTIORARI TO REVIEW A FACT-SPECIFIC APPLICATION OF A FLORIDA RULE OF APPELLATE PROCEDURE 4

CONCLUSION 10

TABLE OF AUTHORITIES

CASES

Braxton v. United States, 500 U.S. 344, 111 S.Ct. 1854 (1991) 4

Ross v. Moffitt, 417 U.S. 600, 94 S.Ct. 2437 (1974) 5

Texas v. Mead, 465 U.S. 1041, 104 S.Ct. 1318 (1984) 5

United States v. Johnson, 268 U.S. 220, 45 S.Ct 496 (1924) 5

Middlesex County Ethics Committee v. Garden State Bar Association, 457 U.S. 423, 102 S.Ct. 2515 (1982) 7

OTHER AUTHORITIES

Rule 10, Supreme Court Rules 4,6

Florida Rule of Appellate Procedure 9.110(b) 2

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES ORDINANCES, AND REGULATIONS INVOLVED

1. Rule 10, Supreme Court Rules

2. Florida Rule of Appellate Procedure 9.110(b)

(b) Commencement. Jurisdiction of the court under this rule shall be invoked by filing 2 copies of a notice, accompanied by filing fees prescribed by law, with the clerk of the lower tribunal within 30 days of rendition of the order to be reviewed.

STATEMENT OF THE CASE

Respondents object to Petitioner's Statement of the Case because the statement discusses matters not appearing on the face of the orders for which he seeks review and for which there is no support in the record. In addition, Petitioner included in his appendix a copy of the Order dated July 18, 1996 and included in parenthesis a statement that this Order was filed in the clerk's office on September 22, 1996 when in fact it was filed on July 22, 1996, as reflected in the Order of the Second District Court of Appeal. For these reasons, Respondents present this statement summarizing the facts as they appear in the orders on review.

On February 23, 1996, the trial court entered an order dismissing Petitioner's second amended complaint with prejudice. Petitioner filed a motion for clarification on February 28, 1996. Subsequently, the judge who entered that order was disqualified. Petitioner then filed a timely motion for reconsideration of the order dismissing his second amended complaint, requesting reconsideration based on the disqualification of Judge Durrance, who entered the

order.

The new judge assigned to the case, Judge Young, granted the motion for reconsideration. After a review, the Court entered an order on July 22, 1996 essentially affirming Judge Durrance's prior order and dismissed the Petitioner's complaint with prejudice. On September 30, 1996, petitioner filed a notice of appeal on September 30, 1996.

The Second District Court of Appeal denied jurisdiction to hear the appeal because Petitioner failed to file his notice of appeal within 30 days of the July 22, 1996 order as required by Rule 9.110(b), Fla. R. App. P. The Second District Court of Appeal's Order centered around the date Judge Durrance's original order dismissing the complaint with prejudice was rendered. The Second District held that Petitioner's motion for clarification filed on February 28, 1996 was not an authorized motion that delayed rendition of the order; however, the February 23, 1996 order was delayed by Judge Durrance's disqualification and Petitioner's motion for reconsideration, reviving the trial court's jurisdiction for the limited purpose of reviewing the previous judicial orders entered by Judge

22, 1996, the trial court's subsequent jurisdiction evaporated, and the February 23, 1996 order was rendered. Thus, with a July 22, 1996 rendition date, Petitioner's notice of appeal was untimely.

Petitioner then petitioned the Florida Supreme Court who declined jurisdiction to hear the appeal.

ARGUMENT

I. THIS COURT SHOULD DECLINE TO GRANT CERTIORARI TO REVIEW A FACT-SPECIFIC APPLICATION OF A FLORIDA RULE OF APPELLATE PROCEDURE.

Rule 10, Sup. Ct. R., states that review on a writ of certiorari is not a matter of right, but of judicial discretion and will be granted only for compelling reasons. Such compelling reasons principally include cases in which a United States court of appeals has entered a decision in conflict with another United States court of appeals or with a state court of last resort on an important federal question; a state court of last resort has decided an important federal question in a way which conflicts with the decision of another state court or United States court of appeals; or a state court or United States court of appeals has decided an important federal question in a way that conflicts with relevant decisions of the United States Supreme Court.

Rule 10, Sup. Ct. R.; *see also, Braxton v. United States*, 500 U.S. 344, 111 S.Ct. 1854 (1991). This Court has repeatedly held that it will not exercise its certiorari jurisdiction merely to review a decision of a state court turning upon an analysis of the particular facts involved. *See, e.g. Ross v. Moffitt*, 417 U.S. 600, 94 S.Ct. 2437 (1974); *Texas v. Mead*, 465 U.S. 1041, 104 S.Ct. 1318 (1984); *United States v. Johnston*, 268 U.S. 220, 45 S.Ct. 496 (1924).

Respondents submit that it is precisely this type of decision which Petitioner now asks this Court to grant certiorari to review. None of the Rule 10 reasons referenced above exist in the present case to justify certiorari review. Contrary to Petitioner's statement of the issues, this case involves no conflict among state courts or United States courts of appeal. Neither does it involve the

resolution of an important federal question in conflict with this Court's prior decisions. Instead this case involves a fact-specific application of Florida's appellate rules of procedure to determine whether Petitioner's notice of appeal was timely.

By Writ of Certiorari, Petitioner now seeks to have this Court review the propriety of the lower court's dismissal of his action, the ruling made by Florida's Second District Court of Appeal that the notice of appeal was untimely, and the Florida Supreme Court's denial of jurisdiction to hear the matter. Petitioner characterizes the issues on appeal as whether he was denied by these rulings his right to a jury trial under Title 42 U.S.C. §1983, U.S.C.A. VII, and the Fair Labor Standards Act of 1938. Petitioner seeks to have this Court review as a substantive matter the original order of dismissal entered by Judge

Durrance and affirmed upon reconsideration by Judge Young. In his petition, however, Petitioner fails to demonstrate how the original dismissal involves an appropriate conflict concerning an important federal question in order to justify this Court's review. That failure notwithstanding, the real question at issue is simply whether Petitioner properly preserved his right to appeal under Florida appellate rules of procedure.

As such, review of this case would first require this Court to determine whether as a procedural matter the Petitioner's appeal to the Second District Court was timely. This Court does not use its certiorari jurisdiction to re-evaluate fact-specific applications of state court rules of procedure. Rule 10, Sup. Ct. R. Under the doctrine of comity, state courts should be allowed to develop rules governing their own state courts and decide issues

concerning those rules without oversight from the federal system, especially when the interpretation of those rules concern no important federal rights. *See, i.e., Middlesex County Ethics Committee v. Garden State Bar Association,* 457 U.S. 423, 102S.Ct. 2515 (1982)(in state court civil proceedings where state interests are involved, the Federal Courts should abstain unless state law clearly bars the imposition of constitutional claims). In this case, the Second District Court decided that Petitioner's appeal was untimely under Florida's appellate rules of procedure. Despite Petitioner's attempt to characterize it as something else, this decision does not involve a conflict concerning an important federal question. Rather, it involves only a factual determination based upon the interpretation of these appellate rules under Florida's decisional precedent. As such, there is no basis to grant certiorari review, and the

Petition should be denied.

CONCLUSION

For the foregoing reasons, this Court should deny Petitioner's Petition for Writ of Certiorari.

Respectfully submitted,

Mitchell D. Franks
Fla. Bar No.: 0102824
LANE, TROHN, BERTRAND
& VREELAND, P.A.
P.O. Box 3
Lakeland, FL 33802-0003
(941) 284-2200
(941) 688-0310 (fax)
Counsel for Respondents